



US Army Corps
of Engineers
Seattle District

Special Public Notice

Regulatory Branch
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Public Notice Date: 11 October 2006
Expiration Date: 25 November 2006

NATIONWIDE PERMIT REISSUANCE AND REQUEST FOR COMMENTS

On September 26, 2006, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the Nationwide Permits (NWP).

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

At the end of this public notice is an index of the proposed NWPs and their general conditions (Enclosure 1). Anyone wishing to provide comments may obtain a full text copy of the proposed NWPs and national conditions through www.regulations.gov (docket ID number COE-2006-0005), the Corps home page, or the Federal Register address listed below.

National Issues Concerning the Proposed NWPs: The Federal Register notice is the public's opportunity to comment on the proposed re-issuance of the NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2006-0005 at www.regulations.gov. Instructions for submitting comments are provided in the September 26, 2006 Federal Register notice. Comments on the proposed NWPs are due by November 27, 2006.

Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning: Division Engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or State. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division Engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. Regional conditions approved by the Division Engineer become effective when the NWPs become effective.

The Seattle District is seeking comments on possible regional conditions to help ensure that impacts authorized by the proposed NWP are minimal. Existing regional conditions may be viewed in Seattle District's Special Public Notice entitled, "Final Regional Conditions ... For Nationwide Permits ... For the State of Washington", dated July 23, 2002, available at the Internet address listed below. In addition, Seattle District is requesting specific comments on the topics in Enclosure 2. Comments on regional issues relating to the proposed NWP and regional conditions are to be sent to the U.S. Army Corps of Engineers, Seattle District, ATTN: Ms. Deborah Knaub, Post Office Box 3755, Seattle, Washington 98124-3755, telephone (509) 682-7010 or facsimile (509) 682 7710 or via e-mail at Deborah.J.Knaub@usace.army.mil. Comments relating to regional conditions are due by November 25, 2006. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices. In response to the comments received on regional conditions, an additional public notice announcing proposed new and revised regional conditions may be published depending on the extent of proposed changes.

Section 401 WQC and CZM: For those NWP that result in a discharge material into waters of the United States, a State, Federal, or individual Tribal Section 401 Water Quality Certification or waiver is required. Additionally, a State Coastal Zone Management Act (CZMA) consistency concurrence or waiver is required for NWP activities within or affecting the State's 15 coastal zone counties. The Corps believes, in general, that these NWP comply with State Water Quality Certification standards and are consistent with State Coastal Zone Management Plans. However, Corps Districts will work individually with appropriate State and Tribal agencies to identify and resolve any issues before finalizing these NWP.

Final regional conditions will be issued concurrently with the final NWP so that Tribes, the State, and EPA can make their Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 60 days of the Federal Register notice announcing the issuance of the NWP. At the end of that 60-day period, the NWP and the regional conditions will go into effect.

The Department of Ecology (Ecology) is also requesting comments on how Section 401 water quality certification and coastal zone consistency determinations should be determined for projects eligible for authorization by NWP. Similarly, the U.S. Environmental Protection Agency (EPA) is requesting comments on how Section 401 water quality certification should be determined on federally recognized tribal lands in the State of Washington where the Tribe does not have Federally approved Water Quality Standards. CZMA consistency determinations are not required on national park and tribal lands. For each NWP, Ecology and EPA will consider one of the decisions listed below:

- 1) Approve. Ecology/EPA certifies that activities authorized by the NWP will meet State water quality standards and be consistent with the State's Coastal Zone Management Program. Permit applicants would not be required to contact Ecology/EPA for an individual water quality certification or coastal zone consistency determination prior to starting work.

2) Partially deny without prejudice. Ecology/EPA adds specific conditions to the NWP to ensure water quality and coastal zone management requirements will be met. Projects complying with these specific conditions would require no further review by Ecology/EPA. However, permit applicants whose projects do not comply with these specific conditions would be required to contact Ecology/EPA for an individual water quality certification and/or coastal zone consistency determination prior to starting work.

3) Deny without prejudice. Ecology/EPA determines that all activities authorized by the NWP require individual water quality certification and/or a coastal zone consistency determination. All permit applicants proposing to use the NWP are required to contact Ecology/EPA for individual water quality certification and/or a coastal zone consistency determination prior to starting work.

Comments regarding Ecology's water quality certification and coastal zone consistency determination processes should be sent to the Department of Ecology, SEA Program, ATTN: Loree Randall, Post Office Box 47600, Olympia, WA 98504-7600, telephone (360) 407-6068 or facsimile (360) 407-6904. Comments are due November 25, 2006.

Comments regarding the Environmental Protection Agency's water quality certification process should be sent to the Environmental Protection Agency, Aquatic Resource Unit, ATTN: Krista Raves-Perkins, 1200 Sixth Avenue, Seattle, WA 98101-1128, telephone (206) 553-6522, email Rave-Perkins.Krista@epamail.epa.gov. Comments are due November 25, 2006.

Environmental Documentation: Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWPs with the requirements for issuance under general permit authority. These documents, as well as the proposed NWPs, are available for viewing at the Seattle District office at 4735 East Marginal Way South, Seattle, Washington, or on the Internet at the www.regulations.gov site (docket ID number COE-2006-0005). Final decision documents will be prepared for those NWPs that are issued. In addition, supplemental decision documents will be issued by Division Engineers to address their determinations concerning regional conditions for the NWPs.

Important Internet addresses in this public notice:

Corps Regulatory Program national home page: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>

Seattle District Regulatory Program home page: <http://www.nws.usace.army.mil> (select "Regulatory")

Seattle District's existing NWPs and regional conditions: <http://www.nws.usace.army.mil> (select "Regulatory" then "Proposed Nationwide Permits")

Proposed 2007 NWPs public notice in the Federal Register: www.regulations.gov (select docket ID number COE-2006-0005). Alternatively, Internet users can access the Federal Register through the Government Printing Office (GPO) at: <http://www.gpoaccess.gov/fr/index.html>.

ENCLOSURE 1

INDEX OF PROPOSED NATIONWIDE PERMITS, CONDITIONS AND DEFINITIONS

Note: * indicates NWP, general conditions, or definitions with changes proposed
** indicates NWPs that currently have regional conditions

PROPOSED NATIONWIDE PERMITS

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance *, **
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities *, **
5. Scientific Measurement Devices *, **
6. Survey Activities *
7. Outfall Structures and Associated Intake Structures *
8. Oil and Gas Structures on the Outer Continental Shelf *
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities *, **
13. Bank Stabilization *, **
14. Linear Transportation Projects *, **
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas *, **
17. Hydropower Projects *
18. Minor Discharges *
19. Minor Dredging *
20. Oil Spill Cleanup
21. Surface Coal Mining Operations *
22. Removal of Vessels *
23. Approved Categorical Exclusions *, **
24. Indian Tribe or State Administered Section 404 Programs *
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities *, **
28. Modifications of Existing Marinas**
29. Residential Developments *, **
30. Moist Soil Management for Wildlife *
31. Maintenance of Existing Flood Control Facilities *
32. Completed Enforcement Actions *
33. Temporary Construction, Access, and Dewatering *, **

34. Cranberry Production Activities *
35. Maintenance Dredging of Existing Basins**
36. Boat Ramps *, **
37. Emergency Watershed Protection and Rehabilitation *
38. Cleanup of Hazardous and Toxic Waste *
39. Commercial and Institutional Developments *, **
40. Agricultural Activities * . **
41. Reshaping Existing Drainage Ditches *, **
42. Recreational Facilities *, **
43. Stormwater Management Facilities *, **
44. Mining Activities *

NEW NATIONWIDE PERMITS

- A. Emergency Repair Activities
- B. Discharges into Ditches and Canals
- C. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
- D. Commercial Shellfish Aquaculture Activities
- E. Coal Remining Activities
- F. Underground Coal Mining Activities

PROPOSED NATIONWIDE PERMIT GENERAL CONDITIONS

1. Navigation *
2. Aquatic Life Movements *
3. Spawning Areas *
4. Migratory Bird Breeding Areas *
5. Shellfish Beds *
6. Suitable Material *
7. Water Supply Intakes *
8. Adverse Effects from Impoundments *
9. Management of Water Flows *
10. Fills Within 100-Year Floodplains *
11. Equipment *
12. Soil Erosion and Sediment Controls *
13. Removal of Temporary Fills *
14. Proper Maintenance *
15. Wild and Scenic Rivers *
16. Tribal Rights *
17. Endangered Species *
18. Historic Properties *
19. Designated Critical Resource Waters *
20. Mitigation *
21. Water Quality *

- 22. Coastal Zone Management *
- 23. Regional and Case-by-Case Conditions
- 24. Use of Multiple Nationwide Permits *
- 25. Transfer of Nationwide Permit Verifications *
- 26. Compliance Certification *
- 27. Pre-Construction Notification

Note: Existing Nationwide Permit General Condition 27, Construction Period, is proposed to be removed.

PROPOSED NATIONWIDE PERMIT DEFINITIONS

Best management practices (BMPs)*
 Compensatory mitigation *
 Currently serviceable *
 Enhancement *
 Ephemeral stream
 Establishment (creation) *
 Independent utility
 Intermittent stream
 Loss of waters of the United States *
 Non-tidal wetland
 Open water *
 Perennial stream
 Practicable *
 Pre-construction notification *
 Preservation *
 Re-establishment *
 Rehabilitation *
 Restoration *
 Riffle and pool complex
 Riparian areas *
 Single and complete project
 Stormwater management
 Stormwater management facilities
 Stream bed
 Stream channelization *
 Structure *
 Tidal wetland
 Vegetated shallows
 Waterbody *

Note: The definitions for “Creation” “Farm Tract”, “Flood fringe”, “Floodway”, “Permanent above-grade fill”, and “Vegetated Buffer” will be removed.

ENCLOSURE 2

Seattle District is requesting comments on the following topic areas as they relate to potential new general and/or NWP-specific regional conditions.

1. Activities requiring pre-construction notification to the Corps.
2. The use of NWPs in certain wetlands or other aquatic resources, as defined by resource type (e.g., playa lakes, prairie potholes, vernal pools), Cowardin classification, geographic location, water regime, etc. Should the use of some NWPs be restricted in certain high value wetlands or waters? Should a pre-construction notification to the Corps be required?
3. Regional conditions for NWPs A, B, D, E, and F.
4. Compliance with the Magnuson-Stevens Fishery Conservation and Management Act, which protects Essential Fish Habitat (EFH).
5. Permittee responsibilities when human burials, cultural resources, or historic properties are discovered during construction.
6. Measures to minimize the environmental impact of bank stabilization activities (e.g., prescribed protective bank stabilization methods, required project impact assessments).
7. Re-planting riparian areas disturbed during construction.
8. Need for subdivision history as part of an application for residential construction projects impacting wetlands.